

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

OCT 12 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JOHN F. GARDNER,

Appellant.

)  
)  
) 2 CA-CR 2006-0350  
) DEPARTMENT A  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20044124

Honorable Hector E. Campoy, Judge

AFFIRMED

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Isabel G. Garcia, Pima County Legal Defender  
By Alex Heveri

Tucson  
Attorneys for Appellant

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H O W A R D, Presiding Judge.

¶1 While intoxicated and driving a pickup truck on a midtown street late one afternoon, appellant John Gardner struck and seriously injured a bicyclist riding at the edge of the roadway. After being indicted in November 2004 on numerous charges, Gardner absconded in January 2005. He was tried in absentia in July 2005.

¶2 After a four-day trial, an eight-person jury found Gardner guilty of six felonies: aggravated driving under the influence of an intoxicant (DUI) while his driver's license was suspended and revoked, aggravated driving with an alcohol concentration of .08 or greater while his license was suspended and revoked, aggravated assault with a dangerous instrument, aggravated assault causing serious physical injury, attempted leaving the scene after causing a serious-injury accident, and criminal damage to property valued between \$250 and \$2,000. The jury found one of the two aggravated assault counts to be a dangerous nature offense.

¶3 Gardner was arrested in December 2005 pursuant to a bench warrant. He was sentenced in January 2006 to a slightly mitigated, 6.5-year prison term for the dangerous nature aggravated assault and to a concurrent, presumptive, 3.5-year term for the other aggravated assault conviction. For the four remaining convictions, the trial court placed him on concurrent terms of probation, the longest for ten years, to commence upon his release from prison.

¶4 Gardner was granted leave to file a delayed notice of appeal, and the court appointed counsel to represent him. Counsel has filed a brief invoking *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating that she has “reviewed the entire record and was unable to find any meritorious issue to raise on appeal.” She asks us to search the record for any reversible error. Gardner has not filed a supplemental brief.

¶5 We have reviewed the record and found that it contains substantial evidence to support Gardner’s convictions. We have also searched for error pursuant to our obligation under *Anders* and have found none. Gardner’s convictions and sentences are, therefore, affirmed.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge